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 2 MARTIN R. FOX (State Bar No. 155783)  
 3 SAMUEL T. REES (State Bar No. 58099)  
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8 Attorneys for Plaintiff  
 Transbay Auto Service, Inc.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 TRANSBAY AUTO SERVICE, INC., )

13 Plaintiff, )

14 vs. )

15 CHEVRON U.S.A. INC. )

16 Defendant. )

Case No. 3:09-CV-04932 SI

**STIPULATION, DECLARATION OF  
 SAMUEL T. REES AND [PROPOSED]  
 ORDER CONTINUING TRIAL BECAUSE  
 OF UAVAILABILITY OF WITNESS**

Trial Date: March 19, 2012  
 Time: 8:30 a.m.  
 Judge: Hon. Susan Illston  
 Location: Courtroom 10, 19th Floor  
 450 Golden Gate Avenue  
 San Francisco, California

21 This matter is currently set for trial on March 19, 2012, at 8:30 a.m. One of the central issues  
 22 to be tried involves the fair market value of Plaintiff's property. Plaintiff has designated Andrew C.  
 23 Plaine as his sole real estate appraiser expert to testify at trial.

24 Following this Court's setting of the March 19, 2012 trial date, Plaintiff's counsel learned  
 25 that Mr. Plaine was just diagnosed with colon cancer and was going to meet with his oncologist to  
 26 establish an immediate treatment plan. Plaintiff's counsel immediately notified Defense counsel and  
 27 this Court's clerk of this news. Subsequently, Plaintiff's counsel was advised that Mr. Plaine's  
 28 oncologist recommended that Mr. Plaine immediately commence chemotherapy (which in fact

1 started on March 5, 2012), that the chemotherapy continue for approximately 6 weeks, that Mr.  
 2 Plaine then spend the following 6 to 8 weeks recovering from chemotherapy, that Mr. Plaine then  
 3 undergo surgery on his colon and finally that Mr. Plaine anticipate that his recovery time from the  
 4 surgery will be approximately 4 weeks during which time he will need to limit his activities.

5 After consultation with Defense counsel, an agreement has been reached to respectfully  
 6 request that this Court continue the current trial until Mid-August, 2012, as this Court's calendar  
 7 permits. Plaintiff's counsel has learned that it is unlikely that Mr. Plaine will be in a condition to  
 8 testify during the time he is recovering from chemotherapy and believes that it would not be  
 9 appropriate for Mr. Plaine to testify while he is undergoing chemotherapy. Continuance of the trial  
 10 should alleviate the need for Plaintiff to designate a replacement expert witness or for the parties to  
 11 undergo the expense and discovery processes that such a replacement designation would entail.

12 For the foregoing reasons, the parties stipulate and request that the current trial date be  
 13 continued.

14 Dated: March 8, 2012

BLEAU/FOX A P.L.C.  
 THOMAS P. BLEAU  
 SAMUEL T. REES

15  
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 18 By /s/ Samuel T. Rees  
 Samuel T. Rees

Attorneys for Plaintiff  
 Transbay Auto Service, Inc.

19  
 20 Dated: March 8, 2012

GLYNN & FINLEY, LLP  
 ROBERT C. PHELPS

21  
 22  
 23 By /s/ Robert C. Phelps  
 Robert C. Phelps

Attorneys for Defendant  
 Chevron U.S.A. Inc.

## DECLARATION OF SAMUEL T. REES

I, SAMUEL T. REES, hereby state under penalty of perjury as follows:

I am an attorney licensed to practice before this Court and all courts of the states of California and Louisiana, among other courts. I am Of Counsel to the law firm of Bleau Fox, a PLC, counsel for Plaintiff Transbay Auto Service, Inc. ("Transbay"). I am the lead trial counsel for Transbay. I have personal knowledge of the matters set forth herein and submit this declaration in support of Transbay's request to continue the trial date in this matter.

On February 9, 2012, this Court conducted a telephonic Case Management Conference regarding the then scheduled March 5, 2012 trial. During the conference, the Court indicated an intention to continue the trial until March 19, 2012, in light of a then pending trial. I participated in that conference along with Robert Phelps, counsel for Defendant Chevron U.S.A. Inc. ("Chevron") in this matter. Both Mr. Phelps and I indicated our intention of communicating with our respective clients and witnesses regarding this trial continuance and any problems resulting from such a continuance.

On February 15, 2012, I received a call from Andrew C. Plaine, Transbay's designated real estate appraiser expert witness, in response to a message I had left for him. Mr. Plaine advised me that he had just been notified by his doctor that he had been diagnosed with colon cancer and should undergo immediate treatment. Mr. Plaine stated that he had an appointment the following day with his doctor to schedule his treatment. At the time, Mr. Plaine stated that he believed he would be starting chemotherapy shortly and undergoing such treatment for approximately 6 to 8 weeks.

Following receipt of this information, I immediately sent an email to Mr. Phelps and this Court's clerk alerting them to this issue and suggesting that Transbay would be seeking a continuance of the trial to a date in May. In response to this email, Mr. Phelps responded that he would stipulate to a continuance and we both agreed to discuss availability with all witnesses during the May period.

The following week I had a second communication with Mr. Plaine. He advised me that based upon his doctor's recommendation he would be undergoing surgery after he recovered from chemotherapy. At the time, I had very little information concerning the recovery process from such

1 chemotherapy and we discussed the possibility of seeking a continuance of the trial such that the trial  
2 would occur prior to Mr. Plaine's anticipated surgery. Since that communication, I have learned that  
3 the recovery from such chemotherapy is arduous and lengthy. After further discussions with Mr.  
4 Phelps, we were and are both of the view that a continuance until a date after Mid-August, 2012, was  
5 more prudent in light of Mr. Plaine's anticipated treatment. On March 7, 2012, I again  
6 communicated with Mr. Plaine and he agreed that it would be more prudent to request a continuance  
7 of the trial until a date after Mid-August, 2012. Mr. Plaine reported to me that he started  
8 chemotherapy on March 5, 2012.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct. Executed this 8<sup>th</sup> day of March, 2011, in New Orleans, Louisiana.

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12 /s/ Samuel T. Rees

13 Samuel T. Rees, declarant  
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[PROPOSED] ORDER

Based upon the parties' stipulation and for the reasons set forth in the Declaration of Samuel T. Rees, the trial in this matter, currently set for March 19, 2012, at 8:30 a.m., is hereby continued to \_\_\_\_\_ 9/4 \_\_\_\_\_, 2012, at \_\_\_\_\_ 8:30 a.m.

IT IS SO ORDERED.

Dated: March 9 2012.



Hon. Susan Illston

U.S. District Judge

## DECLARATION OF SAMUEL T. REES

I, SAMUEL T. REES, hereby state under penalty of perjury as follows:

I am an attorney licensed to practice before this Court and all courts of the states of California and Louisiana, among other courts. I am Of Counsel to the law firm of Bleau Fox, a PLC, counsel for Plaintiff Transbay Auto Service, Inc. ("Transbay"). I am the lead trial counsel for Transbay. I have personal knowledge of the matters set forth herein and submit this declaration in support of Transbay's request to continue the trial date in this matter.

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9 I declare under penalty of perjury under the laws of the State of California that the foregoing  
10 is true and correct. Executed this 8<sup>th</sup> day of March, 2011, in New Orleans, Louisiana.

11  
12 /s/ Samuel T. Rees

13 Samuel T. Rees, declarant  
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[PROPOSED] ORDER

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IT IS SO ORDERED.

Dated: March , 2012.

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Hon. Susan Illston

U.S. District Judge